

REMARKS

At the outset, Applicants would like to respond to the Notice of Non Responsive Amendment dated August 3, 2005. In the Notice, the Examiner alleged that the Applicants did not point out how “newly added” claim 34 overcomes the cited art in the Amendment filed March 15, 2005. Claim 34 was added in the Amendment dated September 24, 2004, not the Amendment filed March 15, 2005. As noted in the Amendment dated March 15, 2005, the Office Action dated November 15, 2004 did not reject claim 34.

In any event, it is respectfully submitted that claim 34 distinguishes over the cited prior art. In particular, Applicants respectfully submit Cypress.com simply fails to teach, either expressly or inherently, each and every element as set forth in claim 34. For example, Cypress.com does not anticipate “using the geographical region, the pest identity, and the plant/crop identity, executing an algorithm for generating instructions for choosing a pesticide registered in the geographical region to protect the plant/crop from the pest,” as recited in claim 34.

Applicants will now turn to the substantive rejections in the Office Action dated November 14, 2005. Applicants thank the Examiner for the review and consideration of the subject application.

Claim 1 is hereby amended. Accordingly, claims 1-34 are currently pending, of which claims 21-33 are withdrawn from consideration. Reexamination and reconsideration of the pending claims is respectfully requested.

In the Office Action, the Examiner rejected claims 1-12 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. It is respectfully submitted that this rejection is moot in view of the amendment, made solely for the purposes of expediting prosecution of the application, to claim 1 above. Consequently, Applicants respectfully request withdrawal of the present rejection under 35 U.S.C. § 101.

In the Office Action, the Examiner rejected claims 1-20 under 35 U.S.C. § 102(a) as being anticipated by Cypress.com (PTO-892, Ref U). This rejection is respectfully traversed and reconsideration is requested.

To anticipate a claim, the reference must teach each and every element recited in the claim. (see M.P.E.P. § 2131). As set forth in M.P.E.P. § 2112, the express, implicit, and inherent disclosures of a reference may be relied upon in the rejection of claims under 35 U.S.C. § 102. However, the fact that a certain characteristic may be present in the reference is not sufficient to establish the inherency of that characteristic. In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied reference.

Nevertheless, in rejecting claim 1, the Examiner cites Cypress.com as allegedly disclosing “imputting into a computer: [t]he identity of a pest existing on a property . . . ; [t]he identity of a plant . . . existing on the property . . . ; [t]he location of the property . . . ; and [e]xecuting an algorithm for generating therefrom instructions for choosing a pesticide registered in said location to protect said plant or crop from said pest (Page 10, ‘Display and print product summaries’ and Page 3.)” With respect to the Examiner’s interpretation of the various pages archived from Cypress.com, Applicants disagree.

Page 10 of Cypress.com merely advertises an “Electronic Pesticide Reference” (hereinafter EPR) that, among other things, allows a user to “[d]isplay and print product summaries . . . for over 390 products.” Applicants respectfully submit, however, the fact that a subscriber may view “product summaries” simply does not, expressly or inherently, indicate that an algorithm is executed which generates instructions for choosing a pesticide registered in an input location to protect an input plant or crop from an input pest, as presently recited in claim 1.

Moreover, Page 3 of Cypress.com merely indicates that a service is provided whereby “pesticide product information (labels, supplemental labels, and MSDSs) provided directly by the pesticide companies [is compiled] in an unbiased presentation, adding extensive features to help users locate the specific information they need. We make this information available directly through books, CD-ROMs, and the Internet....” Similar to Applicants’ remarks made above with respect to Page 10, that information can be provided to subscribers in an unbiased form either through books or the Internet says nothing about any service disclosed in Cypress.com that involves generating an algorithm that generates instructions for choosing a pesticide registered in

an input location to protect an input plant or crop from an input pest, as presently recited in claim 1. Moreover, the fact that the service disclosed at Page 3 of Cppress.com can be equivalently provided via books or via the Internet strongly indicates that the algorithm recited in claim 1 is actually not executed.

The Examiner further appears to justify the application of Cppress.com by correctly noting “Cppress utilizes an “Electronic Pesticide Reference” ... to locate plant protection products” that includes “interactive indexes and product summaries” wherein “[t]hese indexes are labeled by plant ... and pest species.” Continuing, however, the Examiner alleges that, “for a consumer to find a suitable plant protection product, they would first locate on the indexes the particular plant they are seeking protection for... [and, once] the product is identified, the computerized interactive indexes can be quickly searched via pest, site and classification” and concludes that “[t]he input of this information results in a computerized searching algorithm, which displays plant protection product recommendations... [and which] is functionally equivalent to the [claimed] algorithm.” Applicants respectfully submit that the Examiner-alleged description of how Cppress.com operates is wholly unsupported by the disclosure of Cppress.com. As discussed above, Cppress.com merely discloses:

“The New Electronic Pesticide Reference ... brings together all the information found in our best publication ... Plus much more: Display and print product summaries ... Interactive indexes and product summaries ... Indexes include all labeled plant and pest species ... Quickly search the indexes by multiple pests, sites and product classifications....”

In view of the actual disclosure of Cppress.com, Applicants respectfully submit Cppress.com simply fails to teach, either expressly or inherently, each and every element as set forth in claim 1. For example, Cppress.com does not anticipate “executing an algorithm for generating... instructions [based on an input identity of a pest on a property, an input identity of a plant/crop on the property, and the location of the property] for choosing a pesticide registered in said location to protect said plant or crop from said pest,” as recited in claim 1. Consequently, withdrawal of the present rejection of claim 1 and claims 2-12, which depend from claim 1, under 35 U.S.C. § 102(a), is respectfully requested.

Rejecting claim 13, the Examiner essentially applies the same rationale used in rejecting claim 1. However, for essentially the same reasons as set forth with regard to the present rejection of claim 1, Applicants respectfully submit, however, that Cypress.com fails to inherently teach a memory storing a plant database, a pest database, a pesticide database, a location database, and a processor configured to generate instructions regarding which pesticides in the pesticide database are registered for use in a location within the location database, as recited in claim 13. Consequently, withdrawal of the present rejection of claim 13 and claims 14-20, which depend from claim 13, under 35 U.S.C. § 102(a), is respectfully requested.

Applicants believe the foregoing amendments and remarks place the application in condition for allowance and early, favorable action is respectfully solicited.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at (202) 496-7500 to discuss the steps necessary for placing the application in condition for allowance. All correspondence should continue to be sent to the below-listed address.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. § 1.136, and any additional fees required under 37 C.F.R. § 1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

Dated: September 6, 2005

Respectfully submitted,

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